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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 June 2018]

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Canadian Government Must Take Immediate Steps To Implement Recommendations Of Un Working Group On The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises

At its 38th regular session, the UN Human Rights Council will have before it the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the visit to Canada from 23 May – 1 June 2017, which included visits to Ottawa, Toronto, Edmonton, Williams Lake, Vancouver and Calgary.[1]

Amnesty International calls for the Canadian government to commit to implementing the Working Group's recommendations and draws attention to the following specific areas of concern.

Institutions, Laws, Policies and Practices

Referring to the Canadian government's announcement [2] of a new Canadian Ombudsperson for Responsible Enterprise (CORE), the Working Group calls on the government to ensure the CORE is well resourced, financially and with skilled personnel, so that it can provide effective and timely remedies for and recommendations about complaints about human rights abuses associated with operations of Canadian companies. The Working Group urges that the CORE have total independence from government, undertake meaningful investigations and have investigatory powers to summon witnesses and compel stakeholders to produce documents and any other powers necessary to fully address human rights abuses. Amnesty International strongly supports these recommendations, which are central to ensuring the effectiveness and independence of this important new body.

The Working Group took note of widespread allegations of human rights abuses committed by Canadian companies and lack of access to remedy for such abuses. Amnesty International supports the Working Group's recommendation that the government should take measures to remove well-known barriers to access to judicial remedies, including for foreign plaintiffs, rather than waiting for the courts to develop principles. The government should specifically act to address barriers – such as restrictive application of the principle of *forum non conveniens* - for individuals and communities affected by the overseas operations of Canadian businesses to seek effective remedies in Canada.

Amnesty International strongly endorses the Working Group's recommendation that the federal Government explore ways and means to incentivize human rights due diligence by companies, including through regulations on mandatory due diligence and disclosure.

The Working Group welcomed the new human rights defenders guidelines adopted by the federal government, which specifically acknowledge that human rights defenders in foreign countries may face risks associated with the presence or activities of Canadian companies. The Working Group specifically notes the "large number of reported cases of attacks against human rights defenders linked to the operations of Canadian companies overseas." The government should act without delay on the Working Group's recommendations with respect to human rights defenders, including to:

- increase training with respect to the human rights defenders guidelines for public servants and trade officers;

1 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, 23 April 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/116/38/PDF/G1811638.pdf?OpenElement.

2 The Government of Canada brings leadership to responsible business conduct abroad, 17 January 2018, https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringsleadershiptoresponsiblebusinesscond.html.

- set out a "clear expectation that Canadian companies operating abroad should respect the rights of local human rights defenders and environmentalists" and to "provide support to defenders and companies to enable the more effective protection of the legitimate activities of defenders;" and

- guard against criminalization of peaceful protest and "misuse of legal processes and the courts as a way of silencing civil society organizations, human rights defenders and indigenous peoples who raise legitimate grievances."

The Working Group calls on the Canadian government to ensure that existing and future trade and investment agreements include adequate safeguards to protect the environment and human and labour rights. The Minister of International Trade announced on 9 March 2018 that negotiations towards a possible trade agreement with the MERCOSUR trading bloc will include "comprehensive gender, labour, human rights & Indigenous assessments." Amnesty International urges the government to ensure that all existing and future trade and investment agreements be subject to such assessments and other human rights safeguards.

The Working Group highlights areas in which greater coordination and collaboration among Canada's federal, provincial and territorial governments is needed in order to ensure effective implementation of key recommendations, including strengthened access to judicial and non-judicial remedies and, more generally, strengthened mechanisms for sharing information and good practices between federal and provincial authorities, as well as across departments at the federal and provincial levels, through regular meetings of federal and provincial ministers. In this regard, the government should ensure that the Working Group's recommendations are taken up in the context of the commitments to reform coordination and implementation of international human rights obligations that were announced by federal, provincial and territorial ministers responsible for human rights at their meeting on 11-12 December 2017.[3]

Mount Polley Mine Disaster

The Working Group made a number of recommendations regarding the human rights impact of the tailings dam breach at the Mount Polley mine in British Columbia in 2014. Amnesty International continues to have serious concerns about the failure to provide remedy and ensure accountability for the human rights harms that resulted from the breach and to implement the reforms needed to prevent similar disasters.

The Working Group recommends Canada carry out an impact study on the disaster in order to "prevent such incidents in the future." Amnesty International underscores that the impact study must be independent from Imperial Metals or its subsidiaries; independent from the province; transparent; well-resourced; designed with the collaboration and consent of affected Indigenous peoples; and have the objective of understanding the causes of the breach in order to prevent similar incidents in the future as well as the impacts of the breach, in order to provide effective remedy and reparations.

The Working Group recommends that persons responsible for the breach be held accountable. To date the government has let three opportunities to investigate and/or lay charges pass by since the breach[4]. Steps must be taken to hold those responsible to account by 4 August 2019, which is when the statute of limitations will expire.

The Working Group recommends that the government notify affected communities of future discharge permits. Amnesty International calls on the federal and British Columbia governments to ensure that permit amendment

3 Federal, Provincial and Territorial Ministers from across the country gather to discuss Human Rights, 12 December 2017, https://www.newswire.ca/news-releases/federal-provincial-and-territorial-ministers-from-across-the-country-gather-to-discuss-human-rights-663728343.html.

4 The BC Conservation Officer Service and RCMP declined to lay charges under provincial environmental regulations before the statute of limitations expired. The BC government also dismissed two private prosecutions filed in 2016 by MiningWatch Canada and in 2017 by Beverly Sellers. http://www.cbc.ca/news/canada/british-columbia/bev-sellars-private-charges-mount-polley-stay-of-proceedings-1.4511305.

applications as well as new permit applications that seek to discharge mine waste water into the environment follow obligations to consult and seek consent where required. Compliance with permit conditions must be enforced.

The Working Group calls for implementation of the recommendations made in August 2017 by the UN Committee on the Elimination of Racial Discrimination (UN CERD) with respect to the impact of the Mount Polley disaster on the rights of Indigenous peoples. Amnesty International calls on Canada to ensure that those recommendations are implemented by the one-year deadline of August 2018 set by the UN CERD.

Indigenous Peoples

The Working Group makes a number of important observations concerning the situation of Indigenous peoples in Canada and the heightened risk of rights violations resulting from situations of marginalization and impoverishment. For example, the Working Group noted the "socioeconomic gaps between indigenous and nonindigenous peoples" and the "pervasive" violence and discrimination faced by Indigenous women and girls.

The Working Group observed that there is an increased risk of violence against women resulting from the influx of large numbers of temporary and transient workers – mostly men - on which extractive industries rely when operating in remote communities. Amnesty International strongly agrees with the recommendation that "both the Government and businesses should therefore pay special attention to preventing discrimination and sexual violence against women in those contexts and apply a gender lens to human rights and environmental impact assessments."

Amnesty International further supports the recommendation that "Indigenous communities should be provided with resources ... to conduct independent, cumulative and holistic impact assessments of projects with adequate gender sensitiveness to ensure that the voices of all members of the communities are heard."

The Working Group highlighted concerns presented to it about violations of Indigenous land rights, including in respect to a case on which Amnesty International is deeply involved, the Site C dam; and focused on "non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands." Amnesty International agrees that "consultations begin at a stage when significant investments have already been made and are approached in a box-ticking manner, rather than with a genuine desire to obtain the informed consent of the affected communities in accordance with the principle of free, prior and informed consent [FPIC]." FPIC is a human right and Amnesty International endorses the Working Group's expectation that Canada comply with this standard. Proposed new federal impact assessment legislation currently before Parliament[5] should be amended to include consent provisions that require the government not only to "consider" impacts on the rights of Indigenous peoples, but ensure full compliance with FPIC and other human rights obligations.

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5 Bill C-69, An Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects, http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9630600.

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Peru Must Urgently Address Concerns of UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

At its 38th regular session, the UN Human Rights Council (HRC) will have before it the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru from 10 to 19 July 2017, where it visited Lima and various locations in Amazonian and Andean regions.[1]

Amnesty International welcomes the findings of the Working Group and commends its efforts in positively engaging with a wide range of civil society actors in Peru.

Human Rights Defenders

The Working Group findings reflect Amnesty International's own research, which concluded that human rights defenders (HRDs) who protest on the negative impacts of business activities could face stigmatization and misuse of the criminal system.[2]

The organization has documented increasing levels of violence such as harassment, stigmatization and physical attacks against HRDs raising concerns or opposing natural resource-exploitation projects. The organization has also observed that what lies at the root of many of these abuses is often a situation of high social tension generated by a lack of adequate participation, consultation and information regarding these projects.

Also in relation to natural resource-exploitation projects, the organization has documented a systemic lack of investigations and prosecutions for criminal acts against HRDs, leading to entrenched impunity.

Smear campaigns

Amnesty International has observed an increasing use of stigmatization and smear campaigns by governments and corporate representatives to harass and undermine HRDs. Our research has found a number of cases where stigmatizing language has been used against defenders in Peru. For example, representatives of the Yanacocha mining company have accused defender Máxima Acuña of being a squatter[3] although the issue of property ownership is still awaiting a judicial decision. This has not only damaged Máxima Acuña's image and reputation, but also undermined the legitimacy of her struggle at the national and community levels. Amnesty International raised this issue with Newmont, but the company provided no comments.

Criminalization

Amnesty International findings have shown that HRDs can face criminal proceedings for participating in protests and making critical voices heard regarding risks and concerns that may arise in business projects.[4]

As the Working Group report points out[5], on May 2017, after almost five years of proceedings in relation to unfounded criminal charges of land invasion against Maxima Acuña and her family, the Supreme Court of Justice ruled that there was no reason to pursue the charges of land invasion[6]. Since 2011, she and her family have been in a legal dispute with

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1 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru, A/HRC/38/48/Add.2, 9 May 2018.

2 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

3 Amnesty International. Peru: Human rights defender Maxima Acuña criminalized by unsubstantiated criminal prosecution for land invasion. AMR 46/5879/2017, 14 March 2017.

4 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

5 A/HRC/38/48/Add.2, para 37.

6 Amnesty International Peru: Peruvian authorities put an end to the criminalization of defender Maxima Acuña, 3 May 2017.

the mining company Yanacocha around the property and possession of the plot of land where they live. The mining company demanded the family to leave the land and relied on criminal and civil laws to remove their crops and gain ownership of the land.

In addition to that, Amnesty International has gathered information from local organizations that there are about 52 people charged in connection with several demonstrations and strikes connected to the Antaccapay expansion of the Tintaya mining project in the Cusco region.[7] An example of this situation is the case of Oscar Mollohuanca, Herbert Huamán and Sergio Huamaní, who are currently facing criminal proceedings. On 8 May, the Ica High Court of Justice overturned the first instance judgment of acquittal and ordered a new trial against the environmental defenders for the crimes of endangering public safety, obstructing public services and causing civil unrest.[8]

In the context of the Las Bambas mining operation, Amnesty International has gathered information that there are around 300 legal proceedings against HRDs since 2010 for crimes such as kidnapping, coercion or blocking communication channels. A similar situation is faced by HRDs in Cajamarca, where approximately 300 people are facing legal proceedings for opposing the Conga mining project due to its potentially harmful environmental consequences.[9]

Security forces and companies

Excessive use of force

The Working Group has stated that the high number of civilian deaths in social protests may imply a disproportionate use of force by public security forces. In addition, the Working Group has gathered information regarding the lack of investigation and impunity of those responsible for deaths in the protests.[10]

Amnesty International findings are consistent. In the past four years, at least 78 people have lost their lives in situations in which security forces have indiscriminately used force, including firearms, to suppress protests mainly related to large-scale business activities. It is unclear if these security forces were acting on behalf of companies at the time of these killings. In most cases, there is no record of progress in the investigation of these deaths, nor is there any knowledge that police elements have been suspended while the investigation is being conducted.[11]

Agreements between mining companies and the National Police

Evidence gathered by Amnesty International from HRDs who have participated in demonstrations related to the Conga project (Cajamarca), Las Bambas S.A. mine (Apurímac) and the Antapaccay expansion of the Tintaya mine (Cusco) point out that the implementation of this type of agreements has a negative impact on the perception of impartiality that police authorities must show in order to guarantee the protection of human rights.12 Amnesty International considers that the regulations that allow agreements to provide services between the National Police and private companies should be reviewed so as to avoid calling into question the impartiality of state agencies.

Health crisis due to toxic metals and other substances in indigenous communities

The human rights impacts of large-scale business activities identified by the Working Group in various communities and individuals refers to water pollution, the depletion of surface and groundwater and the presence of heavy metals in the blood of mining workers and local inhabitants, who have not been properly diagnosed with transparency or have

7 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018.

8 Amnesty International. Peru: Authorities are criminalizing human rights defenders by overturning judgement of acquittal, 10 May 2018.

9 Id. pp 29.

10 A/HRC/38/48/Add.2, para 76

11 Amnesty International, 2017. Peru: Nothing to celebrate amnesty international submission for the UN Universal Periodic Review – 28th session of the UPR Working Group, November 2017. AMR 46/6624/2017, pp. 8.

12 Amnesty International, 2018. A recipe for criminalization defenders of the environment, territory and land in Peru and Paraguay. AMR 01/8158/2018, pp 24.

received adequate medical treatment.[13] These situations have adverse effects on a series of human rights, including the rights to life, food, water and health.

Amnesty International has documented that the Indigenous Native Community of Cuninico, in the province and department of Loreto, and six Indigenous peasant communities in the province of Espinar, Cusco, are just some of the Indigenous communities in Peru that find themselves in a precarious health situation. Studies show that the main sources of water in these seven communities are contaminated with heavy metals and other chemical substances. In addition, medical tests have shown that the residents of these communities are exposed to heavy metals and other chemical substances which pose an imminent risk to their health.[14]

The government of Peru has a duty to remediate, monitor and provide medical care to those affected. Likewise, it should investigate and control the causes of contamination of water sources in indigenous communities, and taking into account that these communities are in areas of influence of large-scale infrastructure business activities for the transfer of oil and mining activity, respectively.[15]

Recommendation to the UN Human Rights Council

In light of the Working Group preliminary findings, Amnesty International urges the Human Rights Council, its Members and Observer States to:

- Call on the government of Peru to constructively engage with the Working Group and other UN special mechanisms to develop a National Business and Human Rights with full participation of communities, HRDs and civil society organizations based on the recommendations presented by the UN experts and civil society organizations. However, the government of Peru must not use the development of the NAP as an excuse to delay immediate action on corporate wrongdoing.
- Commit to guide the government of Peru to highlight that companies' human rights due diligence responsibilities should include ensuring that any public statements or communications by either the company or individual corporate executives are respectful of HRDs and their work, even of those who oppose or express concerns about their projects. This responsibility entails refraining from expressing views that stigmatize or discredit their work and can put them at risk of violence or exacerbate their vulnerability to it.
- Call on the government of Peru to commit to establishing mechanisms to protect HRDs and investigate human rights abuses and violations caused by, or resulting within the context of, large-scale business activities, in particular extractive and infrastructure projects, and by police excessive use of force during social protests. These mechanisms must be capable of ensuring that all allegations of human rights violations and abuses committed are investigated in a prompt, impartial, independent, thorough and effective manner, as well as be able to investigate overall patterns of abuse, policy and practice, identify those responsible at all levels and issue recommendations aimed at securing victims' right to justice, an effective remedy, including full reparation.
- Urge the government of Peru to refrain from using criminal law against HRDs as a way of criminalizing the defence of human right. In the same sense, guide corporations to oppose or refrain from instigating or pursuing other criminal proceedings with the potential to impact on the rights to freedom of expression, association and peaceful assembly, and engage with them to seek the least aggressive forms of dispute-settlement as part of their human rights due diligence responsibilities.

13 A/HRC/38/48/Add.2, para 39-41.

14 Amnesty International, 2017. A Toxic State: violations of the right to health of indigenous peoples in Cuninico and Espinar, Peru. AMR 46/7048/2017.

15 Id. pp. 12, 29.

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Violence Against Women Online

Amnesty International welcomes the report of the Special Rapporteur on violence against women, its causes and consequences in relation to online violence against women and girls from a human rights perspective.[1]

- **Increased replication of widespread inequality and discrimination against women embedded in society online[2]**

As the Special Rapporteur highlights in her recent report: "When women and girls do have access to and use the Internet, they face online forms and manifestations of violence that are part of the continuum multiple, recurring and interrelated forms of gender-based violence against women."[3]

Amnesty International's research has highlighted the varying ways women experience violence and abuse on social media platforms such as direct or indirect threats of physical or sexual violence, abuse targeting one or more aspects of a woman's, targeted harassment and privacy violations such as doxing or the sharing of sexual or intimate images of a woman without her consent. Sometimes one or more forms of such violence and abuse will be used together as part of a coordinated attack against an individual.[4] In November 2017, Amnesty International commissioned an online poll with Ipsos MORI about women's experiences of abuse and harassment on social media platforms across eight countries including the UK, USA, Spain, Denmark, Italy, Sweden, Poland and New Zealand. The findings showed that nearly a quarter (23%) of the women surveyed said they had experienced online abuse or harassment at least once. Of women polled who had experienced online abuse or harassment, more than a quarter (26%) said they had received threats of physical or sexual assault and almost half (46%) of the women who experienced abuse or harassment said it was sexist or misogynistic in nature. 41% of women who had experienced online abuse or harassment said that on at least one occasion, these online experiences made them feel that their physical safety was threatened.[5]

- **Women have the right to live free from discrimination, both online and offline**

The Special Rapporteur notes in her report that "*women who have multiple identities are often targeted online on the basis of a combination of these factors*".[6] It is therefore imperative that any analysis of violence and abuse against women online is not solely seen through a gender lens. Women who face discrimination because of their different identities offline often find that violence and abuse against them will target those same identities online. An individual's race, religion or sexual orientation, for example, can have just as much of an effect as gender—if not more—on how that person is treated both in the physical and digital world. In the case of online violence and abuse, women of colour, religious or ethnic minority women, lesbian, bisexual, transgender or intersex (LBTI) women, women with disabilities, or non-binary individuals who do not conform to traditional gender norms of male and female, will often experience abuse that targets them in unique or compounded ways.

- **Increased use of violence and abuse against women online as a tactic to publicly exert power over women[7]**

The Special Rapporteur emphasizes that acts of online violence may force women to retreat from the Internet or withdraw from public life.[8] Amnesty International's March 2018 report *#ToxicTwitter: Violence and Abuse against*

1 UN.Doc. A/HRC/38/47, available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HRC_38_47_EN.docx
2 See https://medium.com/amnesty-insights/unsocial-media-the-real-toll-of-online-abuse-against-women-37134ddab3f4
3 See *supra* n. 1, para. 14.
4 See https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-3/#topanchor
5 See supra n. 2.
6 See *supra* n. 1, para. 29
7 See *supra* n. 2.

Women Online highlights the harmful impact of violence and abuse against women on Twitter which can lead women to self-censor what they post, limit or change their interactions online, or at times drive women off the platform altogether. In some instances, the threat of violence and abuse against women on Twitter, alone, leads to a chilling effect on women speaking out. The silencing and censoring impact of violence and abuse against women online can have far-reaching and harmful repercussions on how younger women, women from marginalized communities, and future generations fully exercise their right to participate in public life and freely express themselves online.[9] Amnesty International's online poll showed that of the women polled across the 8 countries who experienced abuse or harassment on social media platforms, 76% said they made some changes to the way they used social media platforms as a result - including 32% of women saying that they changed the way they express themselves online in response to abuse or harassment.

In her report, the Special Rapporteur also raised the high degree of psychological harm associated with violence against women online.[10] It should be noted that the psychological consequences of violence and abuse against women online remains under-researched, and as a result, understated. However, almost every woman interviewed by Amnesty International spoke about the adverse impact of violence and abuse on Twitter on their mental health. In particular, women highlighted the interlinkages between their online and offline identities and stressed how violence and abuse online impacts their lives offline. The findings of Amnesty International's online poll showed that the majority of women polled across the eight countries who experienced abuse or harassment on social media platforms more generally reported stress, anxiety, panic attacks, powerlessness and loss of confidence as a result.

- **Corporate responsibility to respect all human rights**

This is an internationally endorsed standard of expected conduct. The Special Rapporteur notes in her report that *"internet intermediaries play a central role in providing digital spaces for interaction and, as such, have specific human right responsibilities."*[11] The corporate responsibility to respect requires social media platforms to take concrete steps to avoid causing or contributing to human rights abuses. In practice, this means social media platforms should be assessing – on an ongoing and proactive basis – how its policies and practices impact on users' rights to non-discrimination, freedom of expression and opinion, as well other rights, and take steps to mitigate or prevent any possible negative impacts.

This requires social media platforms to have policies that are compliant with international human rights standards and to ensure that it has a robust reporting process that enables users to easily report any instances of violence and abuse. Companies also have responsibility to ensure that women who experience violence and abuse on their platform have access to an effective complaints mechanism that they know about, are easily able to use and also trust. Amnesty International's research into experiences of violence and abuse against women on Twitter showed that despite the platform having a hateful conduct policy that covers many forms of abuse that affect women rights, it means little for women if such policies are not consistently enforced in practice.[12]

Furthermore, it is impossible to assess the effectiveness of reporting mechanisms if companies give little information about their internal review processes, including, how complaints are dealt with, the ratio of company moderators to the volume of reports, the type and level of gender-and other identity based human rights training the staff receives and the time limits and targets for reviewing reports. Social media platforms must also enable and empower users to use individual security and privacy measures such as blocking, muting and content filtering to curate a safer and less toxic online experience.

8 See *supra* n. 1, para. 26.
9 See *supra* n. 4.
10 See *supra* n. 1, para. 27
11 See *supra* n. 1, para. 71.
12 See *supra* n. 4.

While private companies have responsibilities under human rights law, states are considered the primary duty bearers. These obligations include the duty not only to tackle violence and abuse online, but to address the underlying causes of such abuse, including by ensuring the right to non-discrimination in the enjoyment of all human rights.[13] Overall, states must ensure that there are adequate laws in place to prevent and end online violence and abuse against women, and as emphasized by the Special Rapporteur in her report, must also combat negative and harmful gender stereotypes against women that contribute to the manifestation of violence and abuse against women online.[14]

- **Amnesty International urges the Human Rights Council to call on states to:**

1. Reaffirm the principle that that human rights and women's rights protected offline must also be protected online.
2. Comply with the recommendations made by the Special Rapporteur on violence against women, its causes and consequences in her recent report on violence against women online.
3. Recognize online and ICT-facilitated violence against women as a human rights abuse and a form of discrimination and gender-based violence against women, and duly apply core international human rights instruments.
4. Ensure that regulations on internet intermediaries respect the international human rights framework, including with regard to the right to freedom of expression and the responsibilities of businesses to respect human rights.
5. Enact and implement adequate legislation, including, where appropriate, criminal penalties (in line with international human rights law and standards) in relation to violence and abuse against women online.
6. Prioritize and invest in capacity building and training of law enforcement bodies on relevant legislation, gender equality, the harms of online violence and abuse, and best practices to support those who have experienced online violence and abuse.

13 *Ibid.*
14 See *supra* n. 1, para. 66.